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10 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT  
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 ) CR No. 12-00546-R  
14 )  
15 UNITED STATES OF AMERICA, ) ORDER DENYING MOTIONS TO SEVER  
 ) COUNTS AND TO SUPPRESS E-MAIL  
16 Plaintiff, ) SEARCH WARRANT  
 )  
17 v. )  
 )  
18 WILLIAM JOHN ROY, )  
 )  
19 Defendant. )  
 )  
20 )  
21 )  
22 )

23 For the reasons stated on the record at the hearing held on  
24 December 3, 2012, and in this Order, the Court hereby denies  
25 defendant William John Roy's ("defendant") motions to sever  
26 counts and to suppress the e-mail search warrant.

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1           **I.     DEFENDANT’S MOTION TO SEVER**

2           Defendant has moved to sever Count 7 of the Indictment from  
3 the remaining counts in the indictment, based on the fact that  
4 only Count 7 references defendant’s alleged conduct in connection  
5 with his service in Afghanistan.

6           In United States v. Jawara, 474 F.3d 565 (9th Cir. 2007),  
7 the Ninth Circuit instructed that courts should consider the  
8 following factors when deciding whether two counts should be  
9 joined: Similar character; elements of the statutory offenses;  
10 likelihood and extent of evidentiary overlap; the physical  
11 location of the acts; the modus operandi of the crimes, and the  
12 identity of the victims. Id. at 578; see also Fed. R. Crim. Pro.  
13 8 (stating the indictment “may charge a defendant in separate  
14 counts with two or more offenses if the offenses charged . . .  
15 are of a similar character”).

16          Applying the Jawara factors to the facts of the present  
17 case, the Court holds that Count Seven was properly joined with  
18 the remaining counts of the Indictment. The Court finds that the  
19 counts are of the same character; Counts Two, Three and Seven all  
20 share the same elements. The evidence for Count Seven also will  
21 likely and substantially overlap with the evidence for the other  
22 counts. Additionally, the government anticipates and represents  
23 it will call the same witnesses, obtain similar testimony, and  
24 move the same or substantially similar documents into evidence.  
25 As a result, judicial economy is preserved by joinder of the  
26 counts.

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1 In addition, the Court finds no manifest prejudice, as  
2 required by Federal Rule of Criminal Procedure 14(a), that would  
3 necessitate severance of the counts in this case.

4 For the foregoing reasons, defendant's motion to sever  
5 counts is therefore denied.

## 6 **II. DEFENDANT'S MOTION TO SUPPRESS**

7 Defendant also moves to suppress the e-mail search warrant  
8 in this case, arguing that the search and seizure was  
9 unreasonable because the warrant was a general warrant and  
10 overbroad in scope. Few cases in the Ninth Circuit or elsewhere  
11 have addressed the standard of particularity that should be  
12 applied with respect to an e-mail search warrant. The cases that  
13 have addressed the issue, however, have held that the burden  
14 remains on the government to prove how the warrant application  
15 will segregate information regarding third parties from  
16 information relating to the defendant.

17 In this case, the Court holds that the government has not  
18 met its burden of setting forth the items to be seized with  
19 particularity. The information sought by the warrant lacks  
20 protocol that would affirmatively segregate the target  
21 information from information outside the scope of the warrant.  
22 The warrant is therefore overbroad.


23 The inquiry does not end there, however. Where the police  
24 did not act in bad faith, and as such, suppression of the  
25 evidence would not deter police misconduct, the district court,  
26 may, in its discretion, admit the evidence over the objection of  
27 the defendant. Illinois v. Gates, 462 U.S. 213 (1983). In fact,  
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1 exclusion of the evidence is a last resort. Hudson v. Michigan,  
2 547 U.S. 586 (2006).

3 In this case, the court finds that exclusion of the evidence  
4 would not be warranted. The seizure was reasonably conducted,  
5 and the evidence of criminal activity was properly seized. In  
6 executing the warrant, the investigating agents aptly followed  
7 the contours of the warrant. Consequently, the underlying  
8 justification for the exclusionary rule would not be served by  
9 excluding the e-mails, and accordingly, the Court denies  
10 defendant's motion to suppress.

11 IT IS SO ORDERED.

12  
13 DEC. 13, 2013  
14 DATE

  
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15 THE HONORABLE MANUEL L. REAL  
16 UNITED STATES DISTRICT JUDGE

17 Presented by:

18  
19 /s/  
20 SHEILA NAGARAJ  
21 Assistant United States Attorney  
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